

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Policy Guidance Letter (PGL) No. 48, Cost Sharing for Specifically Authorized Environmental Projects

1. Reference: EC 1105-2-210, 1 June 1995, Ecosystem Restoration in the Civil Works Program.
2. Purpose. This PGL sets forth U.S. Army Corps of Engineers policy regarding the cost sharing for construction (implementation) of specifically authorized projects and separable elements for ecosystem (environmental) protection and restoration and implements Section 210 of the Water Resources Development Act of 1996 (WRDA 96).
3. Background. In 1990, the Corps began an environmental initiative which included the establishment of fish and wildlife habitat restoration (later ecosystem restoration) as a budget priority along with the traditional mission areas of commercial navigation and flood damage reduction. There was no cost sharing established in law for these ecosystem restoration projects. Cost sharing requirements were established by the individual project authorizations in accordance with recommendations in the authorizing documents. The ecosystem restoration projects were generally recommended for 75 percent Federal and 25 percent non-Federal cost sharing except that 50-50 cost sharing was recommended in cases where the ecosystem restoration project involved modifications to an existing Federal project which adversely impacted other project purposes.
4. Section 210 of the WRDA 96. Section 210 of the WRDA 96 has established the cost sharing for ecosystem (environmental) protection and restoration projects by amending Section 103(c) of the Water Resources Development Act of 1986 (WRDA 86) to add environmental protection and restoration to the list of project purposes and establish the non-Federal share as 35 percent. Section 210 also adds a qualification to the 35 percent non-Federal share indicating “... that nothing in this paragraph shall affect or limit the applicability of section 906”.
5. Policy for Implementing Section 210 of WRDA 96.
 - a. Cost Sharing. The non-Federal share of ecosystem restoration project or separable element implementation costs (pre-construction engineering and design, and construction) or implementation costs of a multiple purpose project assigned to ecosystem restoration will be 35 percent. The non-Federal sponsor will also pay 100 percent of the costs for operation, maintenance, repair, rehabilitation, and replacement for the ecosystem restoration project, separable element or project feature. The non-Federal sponsor shall provide all lands, easements,

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rights-of-way and dredged or excavated material disposal areas required for the ecosystem restoration project, separable element or project feature and perform all necessary relocations. The value of lands, easements, rights-of-way, relocations and disposal areas (LERRD) shall be included in the non-Federal 35 percent share. Where the LERRD exceeds the non-Federal sponsor's 35 percent share, the sponsor will be reimbursed for the value of LERRD which exceeds the 35 percent non-Federal share. Section 103 of the WRDA 86, as amended, makes no provision for work-in kind and the non-Federal sponsor 35 percent share, after appropriate accounting for LEERD and required non-Federal sponsor project coordination activities under the terms of the Preconstruction Engineering and Design Agreement and Project Cooperation Agreement, will be provided in cash during construction.

b. Ecosystem Restoration Program Philosophy and Policy. Except for the cost sharing change, the ecosystem restoration program philosophy and policy defined in reference 1 remains in effect.

c. Permanent Authorities. The cost sharing for ecosystem restoration projects under the authority of Section 1135 of WRDA 86, as amended; Section 1103 of WRDA 86; Section 204, of the Water Resources Development Act of 1992 (WRDA 92), as amended, and Section 206 of WRDA 96 remains as provided in the authorizing legislation and is not changed by Section 210 of WRDA 96.

d. Applicability. The cost sharing established by Section 210 applies only to projects authorized after 12 October 1996. Ecosystem restoration projects authorized by WRDA 96 and prior legislation will be cost shared in accordance with the provisions of the authorizing legislation.

e. Section 906 of WRDA 86. The cost sharing provisions for ecosystem restoration established by Section 210 of WRDA 96 have the qualification that nothing in the provisions shall affect or limit the applicability of Section 906 of WRDA 86. Section 906 primarily concerns fish and wildlife mitigation which is not impacted by Section 210 since ecosystem restoration and protection projects are not intended to be in lieu of mitigation. Section 906(e) of WRDA 86 provides applicable cost sharing for activities recommended to Congress to enhance fish and wildlife resources. In accordance with the guidance in reference 1, projects for ecosystem (environmental) protection and restoration are not enhancement projects and will be

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recommended to Congress in accordance with the 65 percent Federal and 35 percent non-Federal cost sharing established by Section 210 of WRDA 96 and not in accordance with the variable cost sharing for fish and wildlife enhancement in Section 906(e).

FOR THE COMMANDER:

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